



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4578-00

31 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The record provided for the Board's review was incomplete. However, the Board found that you enlisted in the Navy on 15 May 1995 for four years at age 23.

You provide evidence that you were assigned to the USS FRANK CABLE (AS 40) on 28 August 1995 and were advanced to AN (E-3) on 16 December 1996. The Evaluation Report and Counseling Records you provided for the periods ending 15 July and 10 December 1997 showed improving performance as a photographer and recommendations for both promotion and retention. You were reassigned to the USS BOXER (LHD4) on 9 January 1998.

You served without incident until 13 July 1998 when you were reported in an unauthorized absence (UA) status and remained absent until you surrendered on board on 14 August 1998.

On 25 August 1998 the ship's master-at-arms conducted an investigation into the circumstances surrounding your UA and missing ship's movement. At that time, you said that you went UA because your son was being abused by his mother in another state and you feared for his safety. A statement by the division leading chief petty officer noted that you had been granted leave from 18 June 1998 to 13 July 1998 to take care of your personal problems. You had returned on the day the ship was to get underway, requesting to stay behind because of a pending court date. A lieutenant provided a statement that you were referred to the chaplain's office on the morning you returned from leave. When you did not return, he became concerned and the division searched the ship for you. He then called you and you said that you left because you needed to be at this court appearance.

The investigation also contained your statement of 14 August 1998, in which you claimed that your son's mother was supposed to bring him to you in Memphis, where you were on leave. However, she never showed up and no one had seen her since the 6th of July. You returned to the ship to get your leave extended, but when an extension was denied, you left to go find your son. You claimed it was not until 28 July 1998 when a cousin called and told you that he had found your son. You further claim that when you picked up your son he had a black-eye, busted lip, and bruises on several areas of his body. You stated that your son's mother was not your wife or your girlfriend.

On 27 August 1998 you received nonjudicial punishment (NJP) on the foregoing 31-day period of UA and missing ship's movement. Punishment imposed consisted of reduction in rate to AA (E-2); forfeitures of \$250 per month for two months and 45 days of restriction, both suspended for a period of six months.

Subsequent to your NJP, you submitted a Department of the Navy Family Care Plan Certificate stating that "I cannot comply" with Navy policy that requires that adequate arrangements be made for dependent care in order to remain available during duty hours, extended duty hours, exercises, deployments, etc.

You provide documentation that on 11 September 1998 you were notified that you were being processed for administrative separation by reason of parenthood. You were advised of your procedural rights, declined to consult with legal counsel, and waived the right to have your case reviewed by the general court-martial convening authority. The discharge processing documentation is not file in your record. On 25 September 1998 the ship's legal office requested the personnel office to discharge you in accordance with the commanding officer's direction. There is no separation evaluation report on file in

the record. On 30 September 1998 you received a general discharge by reason of parenthood and were assigned an RE-4 reenlistment code.

You were assigned an a separation code of "JDG" which means "parenthood or custody of minor children." You claim this code should have been "JDF," as shown in the partial discharge packet you provided. A JDF separation code was obviously a typographical error since this code is assigned for pregnancy or childbirth.

In its review of your application, the Board conducted a careful search of available records for any mitigating factors which might warrant a change in your reenlistment code and pay grade shown on your DD Form 214, and recharacterization of your discharge. However, no justification could be found. The Board noted your contentions to the effect that on the day the ship was getting underway, you told your chief you could not go because your son was out in the car and you had no one to take care of him. While Board is sympathetic to single parents, the Board found it difficult to determine what your true statement is, the one you made on 14 August 1998 that states your son was not located until 28 July 1998, some 15 days after the ship got underway, or the statement you are making now. The Board further noted there is no evidence in your record that you ever claimed a son as a dependent or paid child support. Your sudden interest in your son's welfare at the time of your ship's deployment becomes suspect without supporting evidence, such as a birth certificate, payment of child support, paternity rights established by a court, or evidence that you were awarded custody of your son by a court. However, absent evidence to the contrary, a presumption exists that commanding officer had sufficient evidence to discharge you by reason of parenthood. The Board is reluctant to substitute its judgment for that of the commanding officer who is best qualified to determine who should be recommended for reenlistment. Your 31 days of UA and missing movement were serious offenses and provided sufficient justification to warrant the commanding officer's non-recommendation for retention and assignment of an RE-4 reenlistment code. Your contention that you received a suspended reduction in rate is unsupported by the evidence of record. The Board concluded that the discharge and reenlistment code were proper and no changes are warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director